

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 719 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No
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ATULBHAI H RATOD

Versus

STATE OF GUJARAT

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Appearance:

MR PR NANAVATI for Petitioner

MR.A.J.DESAI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1  
Respondent No.2 served.

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 10/10/97

ORAL JUDGEMENT

The petitioner, who is the original accused, in respect of Criminal Complaint No.434 Of 1994 for the offences punishable under sections 365,366,342,344 of the Indian Penal Code of Kagdapith Police Station, has prayed for quashing and setting the aforesaid complaint and the

charge-sheet filed by the investigating agency on basis of the said complaint, the copy of which is annexed as Annexure 'C' to the petition.

I have heard Mr.P.R.Nanavati, learned Advocate for the petitioner, and Mr.A.J.Desai, learned APP, for the respondent No.1-State. Respondent No.2 is the original complainant, Kanjibhai Lalbhai Solanki, who, though served, has not chosen to appear.

It appears from the record that the petitioner and Urmilaben, daughter of Kanjibhai Lalbhai Solanki, the respondent No.2 herein, were residing nearby in the same chawl and had love-affairs. It is also revealed from the record that they had decided to marry and in fact got married on 26.3.1994, as per their marriage registration dated 31.3.1994. The said Urmila was aged 19 years at the time of the marriage. The respondent No.2 thereafter lodged a complaint against the petitioner for the aforesaid offences alleging that the petitioner kidnapped or abducted said Urmila with intent that she may be compelled or knowing it to be likely that she would be compelled to marry with him against her will or in order that she may be forced or seduced to illicit intercourse with him. The offences of wrongful confinement and wrongful confinement for ten days or more were also alleged against the petitioner in the said complaint.

Mr.P.R.Nanavati, learned Advocate for the petitioner, submitted that the charge-sheet filed by the police does not mention any offence under section 366 of the Indian Penal Code. The petitioner has annexed the proposal as to marriage to the Registrar of Marriages wherein she has expressed her willingness to marry the petitioner. Mr.Nanavati has also relied upon the affidavit of the said Urmilaben, aged about 20 years. The affidavit, inter alia, reads that the date of birth of said Urmilaben is 2.11.1974 and she is aged 19 years, and therefore major. The affidavit further reads that she knew the petitioner and was ready and willing to marry him. She also stated on solemn affirmation that she had filed the affidavit in support of the said marriage without any force or coercion and by her free will and without any intimidation or threat. She stated in the affidavit that she has lawfully married with the petitioner on 26.3.1994 according to Hindu rites and rituals.

Mr.Nanavati has also relied upon the school leaving certificate of Urmila wherein her date of birth is shown to be 2.11.1974. The said Urmila was, therefore, major at the time of the above marriage. There is also statement recorded by the police on 6.8.1994. The said Urmila has stated before the Police that she was in love with the petitioner for last three years and that she was major at the time of her marriage with the petitioner and that the petitioner has neither kidnapped nor abducted her without her consent or will. She reiterated that by her own will and consent, she had lawfully married with the petitioner on 26.3.199, according to Hindu rites and rituals and that she wanted to stay with the petitioner.

In the above view of the material before the Police, there is no evidence to show that any offence can be said to have been committed by the petitioner for the offences under sections 342,344,365,366 and 494 of the Indian Penal Code with which the petitioner is charged. The girl, Urmila, was admittedly aged 19 years at the relevant time and was thus major. The marriage had taken place between the petitioner and the said girl, Urmila, which is duly corroborated by her own statement before the investigating agency, as recorded on 6.8.1994, as observed hereinabove.

It appears that there were proceedings of habeas corpus in this court and in those proceedings also, the said Urmila did not state that she had been forcibly kidnapped or abducted by the petitioner. However, according to her will and desire, she had gone with her parents. As a result of that, habeas corpus petition was disposed of.

It is stated at the Bar that the said Urmila, daughter of the second respondent, has thereafter re-married and has been happily living with her husband. That is probably the reason why the second respondent, the original complainant, has not appeared to contest the present petition.

In the above view of the matter and the material,

including the police-papers, it cannot be said that there are prima facie offences as alleged against the petitioner in the charge-sheet. In overall facts and circumstances of the case, and particularly in view of the statement of Urmila, the charge-sheet and the complaint cannot be sustained with respect to the offences under sections 342,344,365,366 of the Indian Penal Code.

In the result, the petition succeeds and is allowed. The Criminal Complaint, being No.434/94 at Kagdapith Police Station and the charge-sheet filed on that basis by the Investigating Agency at Annexure 'C' to the petition are hereby quashed and set aside. Rule is accordingly made absolute.

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